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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

KELLY TERINA CARTER,

Defendant and Appellant.

H043251

(Santa Clara County
Super. Ct. No. C1518626)

Defendant Kelly Terina Carter appeals following her no contest plea to unauthorized use of a vehicle (Veh. Code, § 10851, subd. (a)), and possession of drug paraphernalia (Health & Saf. Code, § 11364). Defendant challenges certain fees imposed in connection with her grant of felony probation.

Defendant was charged with one count of felony unauthorized use of a vehicle, (Veh. Code, § 10851, subd. (a)) and one misdemeanor count of possession of controlled substance paraphernalia (Health & Saf. Code, § 11364).¹ After defendant pleaded no contest to both counts, the court suspended imposition of sentence and placed defendant on three years of formal probation with a condition that she serve 90 days jail.

The court ordered defendant to pay a number of fines and fees, several of which she disputes on appeal: a \$50 per month probation supervision fee (Pen. Code,

¹ We omit the underlying facts because they are not relevant to the issues on appeal.

§ 1203.1b); a \$259.50 criminal justice administration fee (booking fee) (Gov. Code, §§ 29550, 29550.1, 29550.2); a \$50 criminal laboratory analysis fee (crime lab fee) (Health & Saf. Code, § 11372.5, subd. (a)), and associated \$155 penalty assessment; a \$150 drug program fee (Health & Saf. Code, § 11372.7, subd. (a)), and associated \$465 penalty assessment; and a \$4 emergency medical air transportation fee (Gov. Code, § 76000.10).² We address each disputed item separately.

MONTHLY PROBATION SUPERVISION FEE

Defendant argues that the \$50 monthly probation supervision fee should be reduced to \$40, because the minute order is inconsistent with the reporter's transcript. Specifically, the court stated, "[t]here will be a probation supervision fee of \$40 per month." Defendant argues that where there is a conflict in the record, the court's oral pronouncement controls over the minute order. (*People v. Martinez* (2002) 95 Cal.App.4th 581, 586–587.) In light of respondent's concession on this point, the order will be corrected accordingly.

BOOKING FEE

Defendant argues that the \$259.50 booking fee must be stricken for lack of evidence that the fee is based on actual administrative costs. Specifically, she asserts that the court was not aware of the arresting agency and therefore could not know the appropriate amount of the administrative fee to order.

Government Code sections 29550, 29550.1, and 29550.2 govern fees for booking or otherwise processing arrested persons into a county jail. The fee amount may vary depending on the identity of the arresting agency and the eventual disposition of the person arrested.

² Penal Code section 1237.2 prohibits defendants from appealing erroneous fines and fees without first moving for correction in the trial court. Defendant complied with the statutory requirement by raising the issues in writing with the Santa Clara County Superior Court on July 8, 2016 and August 23, 2016.

Arrests made by an agent of a city “or other local arresting agency” are governed by Government Code sections 29550.1 and 29550, subdivision (a)(1). Under Government Code section 29550, subdivision (a)(1), the county may charge the local arresting agency a fee for receiving the arrestee into the county jail. When it does so, under Government Code section 29550.1, “[t]he court *shall*, as a condition of probation, order the convicted person to reimburse the [local agency].” (Italics added.)

Arrests made by a county agent or officer are governed by Government Code section 29550, subdivision (c). That subdivision entitles the county to recover a booking fee from an arrestee convicted of a crime related to the arrest. The fee may not exceed the county’s actual administrative costs, including fixed overhead. Government Code section 29550, subdivisions (d)(1) and (d)(2), specify what a court is to do when the county is entitled to recover a booking fee. Under subdivision (d)(1) of Government Code section 29550, the judgment of conviction *may* include an order imposing the booking fee, while under subdivision (d)(2), the fee must be imposed if probation is granted and if the probationer is able to pay: “The court shall, as a condition of probation, order the convicted person, based on his or her ability to pay, to reimburse the county for the ... fee.”

Defendant’s argument that the trial court was not aware of the agency responsible for her arrest when it ordered the booking fee is without merit. The probation report’s recommendation that “[a] \$259.50 Criminal Justice Administration fee *to the County of Santa Clara* be imposed pursuant to Government Code [sections] 29550, 29550.1 and 29550.2” (italics added) demonstrates that Santa Clara County was the arresting agency. Moreover, the booking fee amount of \$259.50 is based on the county’s actual costs as determined by the Santa Clara County Board of Supervisors.³

³ We granted respondent’s request for judicial notice of Santa Clara County budget documents setting the booking fee for individuals at \$259.50.

The court's imposition of the \$259.50 booking fee was properly based on evidence that Santa Clara County was the arresting agency, and that the fee amount represents the county's actual cost of booking.

PENALTY ASSESSMENTS ON CRIME LAB AND DRUG PROGRAM FEES

Defendant argues that the penalty assessments imposed on the crime lab fee and the drug program fee must be stricken because the fees are not considered punishment, and as a result are not subject to the attachment of penalty assessments. Alternatively, defendant argues that the assessments must be reduced because the court erred in calculating the amount. Respondent contests the first argument, but concedes that the assessments should be reduced.

Penalty assessments apply to any “fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses” and increase such fines, penalties, or forfeitures by a specified amount. (E.g., Pen. Code, § 1464, subd. (a)(1); Gov. Code, § 76000, subd. (a)(1).)

The majority of California courts have found the crime lab fee to be punitive and subject to penalty assessments. (See e.g. *People v. Sharret* (2011) 191 Cal.App.4th 859, 869–870 (*Sharret*) [Legislature intended the crime lab fee to be punitive]; *People v. Martinez* (1998) 65 Cal.App.4th 1511, 1522 [crime lab fee increases the total fine and is therefore subject to penalty assessments]; *People v. Jordan* (2003) 108 Cal.App.4th 349, 368 [crime lab fee is a fine]; *People v. Terrell* (1999) 69 Cal.App.4th 1246, 1256–1257 [same]; *People v. Sanchez* (1998) 64 Cal.App.4th 1329, 1332 [same].) The Supreme Court also assumed that penalty assessments apply in the context of a crime lab fee. (*People v. Talibdeen* (2002) 27 Cal.4th 1151, 1153.)

Like the crime lab fee, the drug program fee has been held to be a fine. *People v. Sierra* (1995) 37 Cal.App.4th 1690 (*Sierra*) analyzed the drug program fee statute and noted that it used the terms “fine” and “penalty,” just as the same terms are used in the penalty assessment statutes. (*Id.* at p. 1695.) Rejecting the contrary argument, the *Sierra*

court explained, “The [defendant’s] interpretation of Health and Safety Code section 11372.7 would lead to absurd consequences by reading out of that very section the fact that it is a fine and/or a penalty. So reading the statute, the trial court could not impose an otherwise mandatory penalty assessment. The [defendant’s] interpretation does violence to the express language of the statute and to the clear intent of the Legislature, and would lead to an absurd result.” (*Sierra, supra*, at p. 1696.) “The only reasonable interpretation of Health and Safety Code section 11372.7 is that it is a fine and/or a penalty to which the penalty assessment provisions of Penal Code section 1464 and Government Code section 76000 apply.” (*Sierra, supra*, at p. 1696.)

In *People v. Watts* (2016) 2 Cal.App.5th 223, 227 (*Watts*), the First District Court of Appeal departed from the weight of authority and held that the crime lab fee is not a fine or penalty, and therefore is not subject to the imposition of penalty assessments. The *Watts* court found an internal inconsistency in Health and Safety Code section 11372.5, subdivision (a) which provides: “[e]very person who is convicted of a violation of ... this code ... shall pay a criminal laboratory analysis fee in the amount of fifty dollars (\$50) for each separate offense. The court shall increase the total fine necessary to include this increment. [¶] With respect to those offenses specified in this subdivision for which a fine is not authorized by other provisions of law, the court shall, upon conviction, impose a fine in an amount not to exceed fifty dollars (\$50), which shall constitute the increment prescribed by this section and which shall be in addition to any other penalty prescribed by law.” The *Watts* court noted that the statute refers to the \$50 charge as both a “fee” and a “fine.” (*Watts, supra*, at p. 231.) It found that a fee is “ ‘imposed to defray administrative costs, and not for retribution and deterrence.’ ” (*Id.* at p. 235.)

Defendant urges us to apply the *Watts* rationale to both the crime lab and the drug program fees, and find that the fees are not “fines” to which penalty assessments would attach. We are not persuaded by defendant’s argument. Although as the *Watts* court

points out, the statute refers to a “laboratory analysis fee” in the first paragraph, it goes on to state that the court “ ‘shall increase the total fine,’ ” and that the court shall “ ‘impose a fine in an amount not to exceed fifty dollars (\$50).’ ” (*Watts, supra*, 2 Cal.App.5th at pp. 230, 231.) We see no practical reason for the Legislature to refer to a “fine” in the second paragraph unless it intended the amount to be imposed as such. *Watts* is an anomaly in its holding to the contrary.

We will follow the weight of authority in California and conclude that the crime lab fee and the drug program fee are in fact fines, and that the penalty assessments were properly imposed here.

Defendant argues alternatively that even if penalty assessments were properly imposed, they should be reduced because they were incorrectly calculated by the trial court. Respondent concedes this issue and agrees that the assessments should be reduced to \$147.50 for the crime lab fee, and \$442.50 for the drug program fee. The trial court incorrectly calculated the penalty assessment under Government Code section 76000, subdivision (e). Instead of calculating that portion of the assessment at 55 percent (\$5.50 for every \$10), the court calculated it at 70 percent (\$7 for every \$10). The rate of Government Code section 76000, subdivision (e) assessments in Santa Clara County cases is 55 percent. Accordingly, we will modify the judgment to reduce the total penalty assessments on the Health and Safety Code section 11372.5 crime lab fee to \$147.50 and on the Health and Safety Code section 11372.7 drug program fee to \$442.50.

FEES AS A CONDITION OF PROBATION

Defendant argues that the \$4 Emergency Medical Air Transportation fee as well as the \$50 crime lab fee and the \$150 drug program fee were incorrectly ordered as conditions of probation. Respondent concedes that the \$4 Emergency Transportation fee should not have been included as a condition of probation because it was collateral to defendant’s crime. We agree and will correct the order accordingly.

With regard to the crime lab fee and the drug program fee, defendant reasserts her argument stated above and cites *Watts* for the proposition that the purpose of the fees is to pay administrative costs associated with the analysis of controlled substances and the preservation of drug abuse programs respectively. She asserts that the fees are not intended to be punitive, and as such should not be included as conditions of probation. As we have already discussed, we reject that argument. Penal Code section 1203.1, subdivision (a)(2) gives the trial court discretion to impose a fine as a condition of probation. For the reasons we have stated, it was not error to impose fines in the form of the crime lab fee and the drug program fee as probation conditions.

DISPOSITION

The judgment is modified as follows: The probation supervision fee is reduced to \$40 per month, the penalty assessments on the crime lab fee are reduced to \$147.50, the penalty assessments on the drug program fee are reduced to \$442.50, and the \$4 emergency air transportation fee is removed as a condition of probation and added to the fees imposed by separate order. As modified, the judgment is affirmed.

Grover, J.

WE CONCUR:

Premo, Acting P.J.

Elia, J.